

STATE OF MICHIGAN  
COURT OF APPEALS

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MELANIE MAUREEN WHITTEN,

Plaintiff-Appellant,

v

LLOYD RALPH BRAUN,

Defendant-Appellee.

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UNPUBLISHED

June 3, 1997

No. 185735

Washtenaw Circuit Court

LC No. 94-1097 NI

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Following a motor vehicle collision in which plaintiff's vehicle, stopped at a traffic light, was rear-ended by a second vehicle driven by defendant, plaintiff filed this action claiming that she suffered personal injuries above the no-fault threshold for tort liability under §3135 of the Insurance Code. *Johnston v Thorsby*, 163 Mich App 161; 413 NW2d 696 (1987).

Defendant moved for security for costs under MCR 2.109, after plaintiff rejected mediation asserting, first, that the collision caused only minor damage to the vehicles in support of the claim that plaintiff should not have been severely injured. Defendant appended to his motion only a photograph of defendant's own vehicle, a pickup truck, and not of plaintiff's vehicle, and a copy of the police report which parrots defendant's claim that "he did not strike vehicle number two very hard." Defendant also cited plaintiff's statement to her treating chiropractor, six weeks after the accident, that "I feel great today." This, of course, evidences only a possible recovery as of that time, but not that the original injuries did not surmount the no-fault threshold for tort liability. The trial court granted defendant's motion, and gave plaintiff about 48 hours to file a bond in the amount of \$1,500 as security for costs.

First, this Court notes that the trial court abused its discretion in failing to provide plaintiff with a reasonable time in which to comply with the security for costs requirement. *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 273-274; 463 NW2d 254 (1990), and cases there cited. Furthermore, the trial court abused its discretion in granting security for costs on this record. Plaintiff's legal theory was by no means "tenuous" or questionable, and plaintiff, in light of the circumstances of the accident, has powerful factual support for a claim based on negligence. Defendant's motion failed to

identify any defects in plaintiff's proofs, other than some evidence that plaintiff's damages might be limited in time. Defendant has never moved for summary disposition of plaintiff's claims on any ground, so as to test the quantity or quality of evidence plaintiff can marshal in support of her claim of injuries above the no-fault threshold for tort liability. A motion for security for costs is not designed as a means of avoiding an adjudication of an otherwise meritorious claim simply because the plaintiff is unable to post the requisite security. *Hall, supra*, 186 Mich App at 270-271. Here, even going beyond the pleadings, which of itself may be improper, *Hall, supra*, 186 Mich App at 273, defendant failed to establish a cognizable basis for imposing a security for costs requirement. The mediation panel did not determine that plaintiff's action is meritless, let alone that it is frivolous. The circuit court therefore erred in granting defendant's motion.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad  
/s/ Harold Hood  
/s/ Gary R. McDonald